

# **EXHIBIT 128**



Deposition of:  
**Kevin Lowder**

*December 10, 2020*

In the Matter of:  
**EIG v. Petrobras**

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

3 - - - - - x

4 EIG ENERGY FUND XIV, :

5 L.P., et al., :

6 Plaintiffs, : Case number

7 v. : 1:16-cv-333-APM

8 PETROLEO :

9 BRASILEIRO S.A., :

10 Defendant. :

11 - - - - - x

12  
13  
14 - - - - -

15 Thursday, December 10, 2020

16 - - - - -  
17  
18

19 CONFIDENTIAL REMOTE ZOOM AUDIO/VIDEO deposition of  
20 KEVIN LOWDER, beginning at 8:05 a.m. CST before  
21 Christina S. Hotsko, RPR, CRR, when were present  
22 on behalf of the respective parties:

1 names of Petrobras -- other than Joao Ferraz.

2 Q. Are the advisors that you're referring to  
3 Lakeshore Partners?

4 MS. LAW: Objection to form.

5 You can answer. 09:38:36

6 THE WITNESS: When I originally -- if I  
7 could -- if I originally remember correctly,  
8 something there was an advisor to Petrobras. And  
9 my original interactions with advisors of  
10 Petrobras were Santander. I believe there was 09:38:58  
11 also a transition of individuals from Santander to  
12 Lakeshore, and I remember also continuing those  
13 conversations with those individuals.

14 So from my perspective, I always, I would  
15 say, viewed Santander and Lakeshore as the 09:39:16  
16 advisors, so I could call them  
17 Santander/Lakeshore, for that period of time. And  
18 they were advising Petrobras.

19 BY MR. WOLINSKY:

20 Q. Is it your understanding that Lakeshore 09:39:35  
21 was advising Petrobras?

22 A. I guess I didn't make the distinction

1 between, you know, Petrobras and Sete and  
2 Lakeshore and Santander, to be quite frank,  
3 because of these transitions that I mentioned.

4 Q. Do you remember anyone specific at  
5 Santander that you communicated with about a 09:39:55  
6 potential investment in Sete Brasil?

7 A. At Santander? Yes. My -- would you like  
8 to know the names?

9 Q. Yes.

10 A. It would be Luiz Reis and Ivan -- Hong, I 09:40:13  
11 believe was his last name -- were the original, I  
12 would say, points of contact and interface, I  
13 believe, over the course of, you know -- person  
14 responsibility for the financial modeling. There  
15 were several more, and I don't remember all of 09:40:28  
16 their names and whether they were, in fact,  
17 Santander or Lakeshore people at any given moment  
18 in time.

19 Q. Did you -- do you remember any specific  
20 names of any persons with Lakeshore that you 09:40:39  
21 communicated with about a potential investment in  
22 Sete Brasil?

1           A.   Yeah.   As I mentioned, I don't believe  
2   Lakeshore existed on my first visit and  
3   interaction related to evaluating Sete Brasil.   I  
4   believe, from recollection, it was formed kind of  
5   over the course during the same general time  
6   period as the investment.   And when it was formed,  
7   I guess, and I believe -- I recall those members  
8   of Lakeshore were the same individuals or had come  
9   from Santander.

09:41:00

10           Q.   Other than Mr. Ferraz, can you identify  
11   anyone else who worked for Petrobras that you  
12   communicated with about Sete Brasil?

09:41:16

13           A.   I don't think I could identify anyone.  
14   As a general matter, I do recall him being the  
15   leader of the group and then being, as is typical  
16   for some of these meetings and general  
17   introductions, there being other members of the  
18   team.   But I cannot identify or recall their  
19   names.

09:41:39

20           Q.   Did you -- did you ever meet with the  
21   Petrobras CEO -- CFO with respect to the Sete  
22   Brasil investment?

09:41:53

1 built this chart?

2 A. I believe I would have. Yes.

3 Q. Okay. And where would you have gotten  
4 the information that you used in this chart?

5 A. I would have sourced the underlying data 10:23:59  
6 likely from a financial model that was furnished  
7 by the target investment company and/or its  
8 advisors. I would likely work with that  
9 underlying data and maybe evaluate various  
10 assumptions, try to ratify those and produce this 10:24:18  
11 type of analysis.

12 Q. And I appreciate this is almost ten years  
13 ago, but do you remember what -- where the  
14 underlying data came from specifically for this  
15 chart? 10:24:35

16 A. For this specific memo, I do not. I'm  
17 sorry.

18 Q. Okay. That's fine.

19 If you look at the chart, there's a row  
20 labeled, USD inflation adjustment. 10:24:42

21 Do you see that?

22 A. I see that.

1 would be the documents, the Excel spreadsheet  
2 where that was --

3 Q. Would you --

4 A. -- performed and then any outputs --

5 Q. Go ahead. 10:44:05

6 A. The outputs of that financial model would  
7 then ultimately be incorporated into memos or  
8 investments recs.

9 Q. That's what I'm going for.

10 So first of all, with respect to the 10:44:17  
11 model, each time you changed the assumptions, did  
12 you save a different copy of the model so that you  
13 could record the results of the sensitivity  
14 analysis?

15 A. I wouldn't say each time. We spent a lot 10:44:25  
16 of time in these models. I would say when there  
17 are certain milestones or when the model was used  
18 for a particular purpose or wanted a share for a  
19 particular purpose, we had many versions, you  
20 know, of the model. 10:44:38

21 So there might be a model that -- again,  
22 using an example -- that corresponds to creating



1 an investment recommendation where we have outputs  
2 that would then go into, let's say, a more  
3 traditional paper document or, like, a Microsoft  
4 Word document or PDF, since you're kind of  
5 freezing or capturing those. We would typically,  
6 you know, try to save a model that corresponded,  
7 you know, with -- with that document so that we  
8 could always refer to that version of the model.

10:44:56

9 Q. I want to go back to your description of  
10 the sensitivity analysis you did where you  
11 described changing the currency assumptions and  
12 seeing how that impacted the overall investment  
13 returns.

10:45:12

14 I'm trying to understand how the results  
15 of that sensitivity analysis were recorded, if  
16 they were.

10:45:26

17 Can you tell me the answer to that  
18 question?

19 MS. LAW: Objection to form.

20 You can answer.

10:45:38

21 THE WITNESS: I believe they would be  
22 memorialized from time to time, again, because, as

1 time goes on, we update the assumptions. But the  
2 most notable, you know, recollection would be the  
3 investment recommendation document. I believe in  
4 this case, there was a foreign exchange  
5 sensitivity analysis done for that document  
6 or that -- yeah, that document. And that's an  
7 example. We might have, again, from time to time,  
8 memorialized that analysis or updated it.

10:45:57

9 MS. LAW: Robert, I don't want to break  
10 your flow, but if there's a good time for a break  
11 in the near future, that would be great.

10:46:16

12 MR. WOLINSKY: Okay. Why don't we take  
13 that break now, and then we'll come back and we'll  
14 look at the investment recommendation.

15 MS. LAW: Okay. What about ten minutes? 10:46:27

16 MR. WOLINSKY: Sure.

17 MS. LAW: It's 10:46. 10:55 New York  
18 time?

19 MR. WOLINSKY: Sure. See you in ten.

20 VIDEO TECHNICIAN: The time is 9:46 a.m. 10:46:36  
21 We are going off the record.

22 (A recess was taken.)

1 other details of receiving the document.

2 BY MR. WOLINSKY:

3 Q. Do you know whether you received this  
4 document directly?

5 A. I don't recall whether it was direct or 11:27:54  
6 indirect.

7 Q. Okay. So sitting here today, do you have  
8 any specific information on how EIG received this  
9 document?

10 A. Not in addition to my previous 11:28:03  
11 statements, no.

12 Q. Do you know when EIG received this  
13 document?

14 A. I don't recall the exact date.

15 Q. Okay. Do you have any information about 11:28:31  
16 when EIG received this document?

17 A. Broad question, but I believe it was  
18 prior to us making the investment and in the  
19 general time frame of us evaluating the  
20 investment, from my recollection. 11:28:48

21 Q. Okay. Do you have any specific  
22 recollection of reviewing this document as of

1 June 2011?

2 A. This is a long time ago. But yes, it  
3 looks familiar, and I believe I recall reviewing  
4 and, you know, incorporating some of this  
5 information into early memorandums and the like. 11:29:23

6 Q. What information from this document did  
7 you incorporate into a memorandum?

8 MS. LAW: And Kevin, if you hover your  
9 mouse at the bottom of the page, there is a menu  
10 that will come up. It starts with page 1. And 11:29:37  
11 then there is a rotate button. If it's sideways  
12 and you want to rotate it.

13 THE WITNESS: Thank you. I think you  
14 might be noticing me tilting sideways --

15 MS. LAW: Tilting your head. 11:29:50

16 THE WITNESS: That button is -- okay.

17 MS. LAW: So if you hover towards the  
18 bottom of the screen, you should get a bar that  
19 comes up.

20 THE WITNESS: Thank you. 11:29:56

21 MS. LAW: There's two magnifying glasses  
22 and then it will be rotate pages two over, next to

1 A. Okay.

2 Q. Are there -- is there anywhere where you  
3 show your work -- how about that? -- for  
4 figure 12?

5 A. It's where we perform the calculations 12:08:23  
6 within the model. I don't know if there's, like,  
7 a bridge of showing the work, so to speak. But  
8 yeah, the calculation that would be performed in  
9 the financial model would produce some results in  
10 a sensitivity format. I would convert those to a 12:08:35  
11 chart format to make it more visually, you know,  
12 understandable and place that in the investment  
13 recommendation.

14 Q. And so there's some sort of underlying  
15 data behind figure 12 that's in an Excel sheet? 12:08:47

16 A. There should be. Yeah.

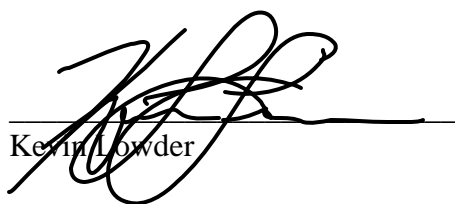
17 Q. Okay. And would you have saved that  
18 Excel sheet at the time?

19 A. Again, typically, we would probably save  
20 a version of the model that corresponds with an 12:09:00  
21 investment recommendation. Sometimes investment  
22 recommendations are updated and we go back to

**ERRATA SHEET***EIG v. Petrobras***Kevin Lowder Transcript (#4364543)**

<b><u>Page</u></b>	<b><u>Line(s)</u></b>	<b><u>Change</u></b>	<b><u>Reason</u></b>
2	3, 4	Daniel B. Goldman and Danielle Moody should not be listed as having appeared on behalf of Plaintiffs	Clarification
30	9	“relate” should be “related”	Transcription error
36	8	“something there” should be “Santander”	Clarification
37	13-14	“person responsibility” should be “persons responsible”	Clarification
50	9	“you” should be “your”	Transcription error
50	22	“and the most” should be “and as the most”	Clarification
51	16	“had things” should be “it had things”	Clarification
52	1	“responsibilities, would” should be “responsibilities, it would”	Clarification
58	14	“analyst, that” should be “analyst, was that”	Clarification
58	16-17	“investment being” should be “investment as being”	Clarification
60	8	“team, would” should be “team, it would”	Clarification
70	18-19	“to be primarily be” should be “to primarily be”	Transcription error
82	22	“that was maybe was” should be “that maybe was”	Transcription error
94	2	“recollection” should be “recordation”	Clarification
128	11, 19	“Brasfels” should be “BrasFELS”	Transcription error
129	2	“afore-mentioned” should be “aforementioned”	Transcription error
130	9	“Brasfels” should be “BrasFELS”	Transcription error


<u>Page</u>	<u>Line(s)</u>	<u>Change</u>	<u>Reason</u>
136	14	“used for a” should be “used as a”	Clarification
185	7	“way, you” should be “way you”	Clarification
185	10	“process. I think” should be “process, I think”	Clarification
185	11	“IRs” should be “IR’s”	Clarification
187	17	“QRs, please” should be “QRs please”	Clarification
187	18	“the T yet” should be “the T: yet”	Clarification
187	19	“Thanks. KL.” Should be “Thanks, KL.”	Clarification
224	7	“-- actually, zero” should be “-- actually, zero --”	Clarification
248	14	“to investment” should be “to an investment”	Transcription error
254	7	“says” should be “say”	Transcription error
255	9-10, 11	“ultradeep water” should be “ultra deepwater”	Transcription error
256	16	“therefore, might” should be “therefore, it might”	Transcription error
258	17	“July 5th” should be “July 5th [sic]”	Clarification
265	19	“energy funds” should be “Energy Funds”	Transcription error

  
 Kevin Powder

1/6/21  
 Date

ACKNOWLEDGEMENT OF DEPONENT

I, Kevin Lowder, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

  
Kevin Lowder

1/6/21  
Date